IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5257 of 2015

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1. M/s Jyoti Enterprises through its sole Proprietor namely Mukesh Kumar, son of Late Ram Chandra Chaudhary.
2. Mukesh Kumar , son of Late Ram Chandra Chaudhary, resident of Mohalla - Choti Yusufppur, Hajipur, Police Station - Industrial Area, Hajipur, District- Vaishali.

... ... Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Department of Social Welfare, Government of Bihar, Patna
2. The Secretary, Department of Social Welfare, Government of Bihar, Patna.
3. The Director , ICDS Directorate , Department of Social Welfare , Government of Bihar, Patna.
4. The District Magistrate , Sitamarhi.
5. The District Program Officer, Sitamarhi.
6. The Child Development Project Officer, Dumra Rural , District- Sitamarhi.
7. The Child Development Project Officer, Dumra Sadar, Sitamarhi.
8. The Child Development Project Officer , Bairgania, Sitamarhi.
9. The Child Development Project Officer , Sonebarsa , Sitamarhi.
10. The Child Development Project Officer, Bokhra, Sitamarhi.
11. The Child Development Project Officer , Belsand , Sitamarhi.
12. The Child Development Project Officer, Nanpur, Sitamarhi.
13. The Child Development Project Officer, Runnisaidpur, Sitamarhi.
14. The Child Development Project Officer, Bajpatti, Sitamarhi.
15. The Child Development Project Officer, Parsauni, Sitamarhi.
16. The Child Development Project Officer, Riga, Sitamarhi.
17. The Child Development Project Officer, Suppi, Sitamarhi.
18. The Child Development Project Officer, Majorganj, Sitamarhi.
19. The Child Development Project Officer, Bathnaha, Sitamarhi.
20. The Child Development Project Officer, Sursand, Sitamarhi.
21. The Child Development Project Officer, Pupri, Sitamarhi.
22. The Child Development Project Officer, Choraut, Sitamarhi.
23. The Child Development Project Officer, Parihar, Sitamarhi.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Rajiv Nayan Singh, Adv.
	:	Mr. Murlidhar Mishra, Adv.
	:	Mr. Mrigendra Kumar, Adv.
For the State	:	Mr. Rajiv Ranjan, Adv.(Ac to GP 20)

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CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY
ORAL JUDGMENT
Date : 16-04-2024

The writ petition has been filed for directing the respondents nos. 1 to 5 to make payment of two bills dated 29.09.2010 amounting to Rs. 22,08,885/- and Rs. 2,04,490/- wherein the total amount is Rs. 24,13,375/- to the petitioner namely M/S Jyoti Enterprises towards the supply of 2057 and 1658 units of adult weighing machines and baby weighing machines respectively to the respondents as per the order issued vide Memo No. 427/JI, Sitamarhi dated 15.06.2010 issued by the 4th respondents and also for refund of earnest money amounting to Rs. 45,000/- deposited by the petitioner.

2. The brief facts culled out of the petition is that the petitioner no. 1 is a proprietorship firm under the sole proprietorship of petitioner no. 2 who is a registered supplier of various articles including weighing machines etc. to the Bihar State Government/Semi-Government Bodies. The short term tender notice dated 18.09.2009 was issued by the 4th and 5th respondents inviting seal tender from the registered firms and manufacturers for purchase of 1658 and 2057 units of baby weighing machines and adult weighing machines respectively on or before 03:00 PM of 09.10.2009. The petitioner has applied for the tender by paying the requisite amount of earnest money amounting to Rs. 45,000/-. Further on scrutiny of

the tenders the petitioner was allotted with the tender for both the units "1658 and 2057" baby weighing machines and adult weighing machines respectively. Accordingly, the petitioner has supplied the said weighing machines to the respondents.

3. It is pertinent to mention that the District Purchase Committee have conveyed the meeting and approved Rs. 705 and Rs. 605 as purchase rate for baby weighing machines and adult weighing machines respectively. Accordingly, the petitioner supplied the machines to the respondent nos. 6 to 23 but he did not receive the payment from the State Government, inspite of submitting the bills. The petitioner was informed that it takes time for making the payment, in order to obtain approval from the 4th respondent. As the payments were not being made to the petitioner by respondent nos. 4 and 5 and his earnest money was also not refunded for which the petitioner was constrained to file the present writ petition. It is also relevant to mention that the petitioner has made several representations to the respondent nos. 4 and 5 asking them to make the payments.

4. A detailed counter affidavit was filed by the 4th respondent admitting about the short tender notice, inviting tenders for purchase of baby weighing machines and adult weighing machines and also about the participation of the petitioner in the

said tender, finalizing the tender approval of the purchase committee as to the purchase rate being fixed for each of the weighing machines and also for supply of the weighing machines by the petitioner herein. Further, it is also admitted in the counter affidavit about the petitioner furnishing the bills amount to Rs. 24,13,337/- to the 5th respondent i.e. the District Program Officer, Sitamarhi. The counter affidavit further discloses in order to enquire the quality and quantity of the machines in question supplied by the petitioner-firm, a Three Members Committee was constituted by the District Magistrate, Sitamarhi vide order Memo no. 402 dated 19.06.2013 and thereafter, letters have been issued to conduct enquiry and to verify the machines in question from the year 2014 to 2019. The counter affidavit further reveals that after receiving of the required report, due procedure has been adopted for payment of assessed amount to the petitioner at the earliest. The said counter was filed on 30.08.2023.

5. Another counter affidavit was filed by the 4th respondent admitting the contents of the 5th respondent. Further it is contended in the counter affidavit that Three Members Committee was constituted by District Magistrate, Sitamarhi vide order Memo no. 402 dated 19.06.2013 and after receipt of the report, procedure shall be followed and payment shall be made and

in compliance of the order dated 22.09.2023 passed by this Court. A Supplementary Counter Affidavit dated 12.10.2023 was filed on behalf of the respondent no. 4, District Magistrate, in which it was submitted that due to transfer of officers of previous Three Members Committee, enquiry in question could not be completed and as so a new Enquiry Committee consisting of four members have been constituted by the District Magistrate, Sitamarhi vide order Memo no. 1180/District Program dated 04.10.2023. The supplementary counter affidavit also discloses that Enquiry Committee has submitted an interim report vide letter no. 2101/DRDA dated 12.10.2023 in which it was submitted that due to strike of Anganvari Sevika/Sahayika, enquiry in question could not be completed and the Committee needs at least one month time for completing the enquiry. Pursuant to the orders of this Court dated 03.11.2023, time was granted and a joint report has been submitted by the Four Member Committee headed by Deputy Development Commissioner, Sitamarhi vide letter no. 2383 dated 02.12.2023 which reads as under:-

> *"I. The weighing machines were not supplied within the 30 days time limit as mentioned in the order no. 427 dated 15.06.2010 by D.M., Sitamarhi (Annexure - 'B' and 'C').*
>
> *II. That the Weighing Machines at all inspected Anganwari Centres are non-funtional and non of the reports prove good quality of the machines supplied.*

> *III. That the Weighing Machines at all inspected Anganwari Centres are non-functional and none of the reports prove good quality of the machines supplied.*
>
> *IV. As the machines are non-functional and good quality is not established in any of the inspection reports, payment for the same cannot be recommended."*

6. A detailed rejoinder was filed by the petitioner contending that he has supplied the weighing machines to the respondents in the year 2010 and payments were not made till date and the reply of the respondents was based on the Committee Report after duly following the procedure. It further reveals that there was no complaint made whatsoever by the respondents about the quality and quantity of the machines supplied by the petitioner till 2023. The rejoinder further contends that after lapse of 13 years of the supply, the Committee making a joint report with respect to the quantity and quality of the machines is bad in the eye of law and therefore, prayed to direct the respondents to make the payments for the agreed rates.

7. Perused the record. After considering the rival submissions of both the counsel, it is evident that the petitioner has supplied the weighing machines to the respondents no. 6 to 23. Indeed, he has submitted all the bills, but the payment was not made and it was kept pending since 2010. Now at this juncture, the joint report of the Four Members Committee speaks about the quality and quantity of weighing machines. Further the

respondents never complained/disputed about quality and quantity at any point of time. However after the lapse of 13 years It is not proper to assess about the quality of weighing machines, that too of the joint committee report. Therefore, the claim of the petitioner is justifiable and the writ petition is allowed directing the respondents to make the payments to the petitioner within three months from the date of receipt of the order with an interest @ 4% from the date of supply of weighing machines.

8. With the aforesaid observation, the writ petition stands disposed of.

9. Interlocutory Application(s), if any, shall stand disposed of.

(G. Anupama Chakravarthy, J)

amitkr/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	06.05.2024
Transmission Date	